(8) (9)

Nos. 90-1361 and 90-1484

FILED
JUL 29 1991
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1991

HOLYWELL CORPORATION, ET AL., PETITIONERS

v.

FRED STANTON SMITH, ETC., ET AL.

UNITED STATES OF AMERICA, PETITIONER

v.

FRED STANTON SMITH, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the trustee of a liquidating trust, appointed by a bankruptcy court to receive and dispose of the debtors' assets pursuant to a Chapter 11 plan of reorganization, is required to file federal income tax returns on behalf of the debtors and pay the taxes due.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 911 F.2d 1539.[1] The opinion of the district court (Pet. App. 17a-27a) is unreported. The opinion of the bankruptcy court (Pet. App. 28a-37a) is reported at 85 Bankr. 898.

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[1] References to "Pet. App." in this brief are to the Appendix to the petition (No. 90-1361) filed by the debtors in the under-

JURISDICTION

The judgment of the court of appeals was entered on September 18, 1990. A petition for rehearing was denied on December 21, 1990 (Pet. App. 40a-41a). The petition for a writ of certiorari in No. 90-1361 was filed on February 28, 1991. The petition for a writ of certiorari in No. 90-1484 was filed on March 21, 1991. The petitions were granted on May 28, 1991. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 6012(b) of the Internal Revenue Code, as amended, provides in pertinent part:

A. Section 6012(b)(3):

> In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

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lying bankruptcy proceeding. The petition filed by the debtors has been consolidated for briefing and argument with the petition filed by the United States (No. 90-1484). The parties to the proceedings in the court of appeals, in addition to the United States, were Holywell Corporation, Miami Center Limited Partnership, Miami Center Corporation, Chopin Associates, Theodore B. Gould (collectively, the debtors), Fred Stanton Smith (the trustee) and the Bank of New York (the bank).

B. Section 6012(b)(4):

> Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

2. Section 6151(a) of the Internal Revenue Code, as amended, provides:

> Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

STATEMENT

1. Miami Center Limited Partnership obtained a construction loan from the Bank of New York (the bank) for development of the Miami Center, a commercial real estate project in downtown Miami. Following default on this loan, the Miami Center Limited Partnership and the related Holywell Corporation, Chopin Associates, Miami Center Corporation, and Theodore B. Gould (the debtors) filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida. The cases were consolidated. Pet. App. 2a. On October 22, 1984, the bankruptcy court authorized the consummation of a pre-petition contract to sell parcels of real property in Washington, D.C. (the Washington properties), owned by Holywell Corporation. These

sales were concluded in December 1984 and January 1985, generating proceeds of approximately $32 million. Pet. App. 29a; *Holywell Corp.* v. *Bank of New York*, 59 Bankr. 340, 345 (S.D. Fla. 1986).

2. The debtors and the bank thereafter submitted competing plans of reorganization to the bankruptcy court. On August 8, 1985, the bankruptcy court confirmed an amended version of the bank's plan, over the debtors' objections. The district court affirmed the confirmation order. See *Holywell Corp.* v. *Bank of New York*, 59 Bankr. at 353. The Eleventh Circuit subsequently dismissed, as moot, the debtors' appeal of the confirmation order because the plan had been substantially consummated and no effective relief could be fashioned. See *Miami Center Ltd. Partnership* v. *Bank of New York*, 838 F.2d 1547, 1557, cert. denied, 488 U.S. 823 (1988).[2] Pet. App. 2a-3a.

The plan, which was effective October 10, 1985, called for transfer of essentially all of the debtors' assets (including the Miami Center and the proceeds from the sale of the Washington properties) to a liquidating trust.[3] See Pet. App. 42a-43a.

> Article V of the Plan vests the liquidating trustee with all right, title, and interest of the debtors in their estate property and empowers the trustee to administer the liquidation of that

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[2] The government filed no objection to the confirmation of the plan and did not participate in the appeals of the confirmation order. Pet. App. 18a-19a.

[3] Article V of the plan provides that "[a] Trust is hereby declared and established on behalf of the Debtors effective on the Effective Date and an individual to be appointed by the Court * * * is designated as Trustee of all property of the estates of the Debtors." Pet. App. 43a.

> property pursuant to the Plan. The Plan authorizes the liquidating trustee not only to liquidate the debtors' property but also to manage the property "in all other ways as would be lawful for any person owning the same to deal therewith. . . ."

Pet. App. 14a. See *id.* at 43a-46a.

Under the plan, the trustee of the liquidating trust was directed to enter into a contract with the bank for sale of the Miami Center. A sale price of $255.6 million was established, consisting of approximately $16 million in cash and the cancellation of $240 million of debt owed by the debtors to the bank. The net proceeds of the sale were to be paid into the liquidation trust, along with the proceeds from the sale of the Washington properties, for eventual distribution to creditors. Pet. App. 3a & n.2, 19a.

3. Although the gain on the sale of the Washington properties was realized during the fiscal year ending July 31, 1985, no tax returns reporting the pre-confirmation sale income were filed until January 4, 1988. At that time, Holywell Corporation filed a consolidated tax return for fiscal year 1985 and requested the trustee (who then held the sale proceeds, along with the debtors' other assets) to pay the taxes owed. Pet. App. 3a & n.3, 19a.

Neither the corporate debtors nor the trustee filed federal income tax returns for any fiscal year ending after July 31, 1985. As a result, they never reported the gains realized from the sale of the Miami Center property. Nor did the debtors or the trustee report the interest income derived by the trustee from reinvestment of the sales proceeds. Pet. App. 3a-4a. The taxes owed on the realized gains (in excess of $75 million) from the sales of property, and the interest

income (in excess of $8 million) earned on the proceeds of those sales, were thus neither reported nor paid by the debtors or the trustee. See 90-1361 Pet. 6 n.5.

4. Instead, on December 27, 1987, the trustee of the liquidating trust filed an adversary proceeding in the bankruptcy court seeking a declaration that the trustee was not obliged to file federal income tax returns or pay income tax on the gains realized from the sales of the Washington and Miami Center properties or the interest income received on the proceeds of those sales.[4] Pet. App. 4a. The government contended that the trustee was required to file income tax returns on behalf of the debtors and to pay the tax due, pursuant to Sections 6012(b)(3) and (4) and 6151(a) of the Internal Revenue Code (26 U.S.C.). Under Section 6012(b)(3), "a receiver, trustee in a case under title 11 of the United States Code," or "[an] assignee," having possession of or title to substantially all of the property of a corporate debtor, is required to file tax returns on behalf of the debtor. With respect to individual debtors, Section 6012(b)(4) similarly provides that the returns of a "trust" or an "estate of an individual under chapter 7 or 11 of title 11 of the United States Code" shall be filed by the "fiduciary thereof." Section 6151(a) then further provides that the person required to file such a tax return shall "pay such tax."

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[4] No determination of any party's tax liability had then been made by the IRS with respect to such gains and investment income. In the absence of a return, the IRS informs us that it has now tentatively computed Holywell's liability for tax, penalties and interest for the tax year ending July 31, 1986, to be in excess of $33 million.

The bankruptcy court held, however, that the trustee was not responsible for filing federal income tax returns on behalf of the debtors and therefore was not responsible for paying the federal income taxes due. The bankruptcy court ruled that the liquidating trustee was not a "trustee in a case under title 11" within the meaning of Section 6012(b)(3), but rather "a creature of a contract, * * * a contract trustee." Pet. App. 32a. The court further held that the trustee was neither an "assignee" under Section 6012(b)(3) nor a "fiduciary" under Section 6012 (b)(4), reasoning that the trustee's duties and powers were limited to disposition of the debtors' assets and were thus analogous to those of a "disbursing agent." Pet. App. 32a-33a. The court concluded that the debtors, not the trustee, were responsible for reporting and paying any taxes due on the realized gains and interest income, notwithstanding the fact that all assets from which payment could be made had been transferred from the debtors to the trust. Pet. App. 31a-34a. The district court adopted the bankruptcy court's reasoning and affirmed its ruling. Pet. App. 17a-27a.

5. With one judge dissenting, the Eleventh Circuit affirmed. The court of appeals held that "[b]y its terms" (Pet. App. 11a), Section 6012(b)(3)—which requires a "trustee in a case under title 11 of the United States Code" to file returns—"refers only to trustees who are appointed under Chapter 11 of the Bankruptcy Code." Pet. App. 11a. In the court's view, the liquidating trustee—who had been appointed by the bankruptcy court in this case—was not a trustee in a case under Title 11, "but rather a contract trustee performing limited and essentially ministerial duties." *Ibid.* The court further stated that

"the liquidating trustee's non-discretionary duties of distributing the trust property in accordance with the Plan makes him similar to a disbursing agent rather than an assignee or fiduciary." Pet. App. 11a-12a. The court suggested that its "conclusion does not leave the government without the ability to collect taxes on the post-confirmation sale of property. It simply means that the reorganized debtor, not the liquidating trustee is responsible for such taxes." Pet. App. 9a-10a.[5]

In dissent, Judge Cox noted that the majority had misread the plain words of the applicable statute. Judge Cox observed that Section 6012(b)(3) applies to all trustees "in a case under title 11 of the United States Code," not simply to trustees "appointed under Chapter 11" of that title. Pet. App. 13a (emphasis omitted). In his view, the majority's distinction between a "contract trustee" appointed by the bank-

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[5] The government also contended that the liquidating trustee is required to pay taxes under the plan of reorganization either as an administrative expense under Article I of the plan (and 11 U.S.C. 503(b)) or as a charge on the trust property pursuant to Article V of the plan. Article I provides for payment, as an administrative expense, of actual and necessary expenses incurred in preserving the bankrupt estate. Article V provides that "[a]ll costs, expenses and obligations incurred by the Trustee in administering the Trust or in any manner connected, incidental or related thereto, shall be a charge against the Trust Property." Pet. App. 9a. The court of appeals concluded that there was no duty to pay taxes directly under the plan (*ibid.*). Obviously, however, if, as we contend, the trustee is legally required to report and pay taxes on the income he receives in administering the debtors' property under Sections 6012(b) and 6151(a) of the Internal Revenue Code, such payments would represent an expense incurred in preserving the estate under Article I and an "expense[] and obligation[] incurred by the Trustee" in administering the property under Article V of the plan.

ruptcy court (Pet. App. 11a) and a "trustee in a case under title 11" (emphasis omitted) simply "fails to comport with the broad wording of the statute." Pet. App. 13a. The majority's interpretive gymnastics were, Judge Cox stated, inconsistent with the statute's legislative history, which reveals Congress's intent "to reach a broad spectrum of persons acting in a fiduciary capacity for a corporation in bankruptcy." Pet. App. 14a (citing H.R. Rep. No. 1337, 83d Cong., 2d Sess. A396 (1954), and S. Rep. No. 1622, 83d Cong., 2d Sess. 563 (1954)). Judge Cox concluded:

> [S]ection 6012(b)(3) anticipates any situation where substantially all the assets of a corporation are vested in a person acting in a fiduciary capacity for the bankrupt corporation. Accordingly, the liquidating trustee, not the assetless corporate debtors, should be responsible for discharging tax obligations.

Pet. App. 14a. He also concluded that the liquidating trustee is a "fiduciary" within the meaning of Section 6012(b)(4) and, therefore, responsible for filing returns and paying taxes for the estate of the individual debtor. Pet. App. 15a.

SUMMARY OF ARGUMENT

I. Congress has long manifested its intent that income accruing to a corporate debtor in bankruptcy is not to escape taxation. Section 6012(b)(3) requires a "receiver, trustee in a case under title 11 of the United States Code, or assignee," who obtains possession of or holds title to "all or substantially all the property * * * of a corporation" to file the income tax return for that corporation. The statute emphasizes the breadth of its command by stressing that the "receiver," "trustee," or "assignee" has this obli-

gation "whether or not such property * * * is being operated" and whether he comes into possession of the corporation's assets "by order of a court * * *, by operation of law or otherwise." Section 6151(a) further requires that the taxes due on the return be paid by the person who files the return.

The legislative history of Section 6012(b)(3) supports the conclusion that the statute should be applied as comprehensively as its language indicates. Regulations under the earliest version of this section, Section 13(c) of the Revenue Act of 1916, ch. 463, 39 Stat. 771, construed the phrase "receivers, trustees in bankruptcy, or assignees" broadly to include "trustees in dissolution," who were deemed to "stand[] in the place of the corporate officers and * * * required to perform all the duties and assume all the liabilities which would devolve upon the officers of the corporation were they in control." Treas. Reg. 45, art. 622 (1919). The decisions uniformly supported this interpretation. In clarifying the language of the statute in 1954, Congress confirmed that the phrase "receiver, trustee in bankruptcy, or assignee" was intended to include any "fiduciary" acting on behalf of a corporation. Section 6012(b)(3) is thus designed to reach any situation in which substantially all the assets of a corporation are vested in a third party acting in a fiduciary capacity. The statute imposes on that fiduciary the responsibility for reporting and paying the taxes due upon income derived from the corporate assets in his possession.

The text of Section 6012(b)(3) compels the conclusion that the trustee in this case is subject to these obligations. The court of appeals' holding that the liquidating trustee is not a "trustee in a case under

title 11" cannot be reconciled with the broad language and comprehensive purpose of the statute. The liquidating trust was created pursuant to a plan confirmed in a case under Title 11; the trustee was then appointed by the bankruptcy court acting under Title 11; the bankruptcy court reserved jurisdiction to implement the provisions of the plan under Title 11; and jurisdiction existed in the bankruptcy court to resolve this declaratory judgment suit solely under Title 11. Inasmuch as Title 11 is the sole source of authority for the bankruptcy court to direct the disposition of the debtors' property, it is evident that the liquidating trustee appointed by the bankruptcy court is a "trustee in a case under title 11."

The liquidating trustee also functions as an "assignee" or "receiver" within the meaning of Section 6012(b)(3). An assignee is "one to whom a right or property is legally transferred." *Webster's Third New International Dictionary* 132 (1986). The term "receiver" has been defined as "embracing any person acting as [an] agent or depository of funds for a court." *Spring Valley Water Co.* v. *San Francisco*, 246 U.S. 391, 395 (1918). Both these terms accurately describe the liquidating trustee.

In accordance with the broad statutory objective, courts have consistently applied Section 6012(b)(3) to liquidating trustees of every type and description. The holding of the court of appeals in this case—that a liquidating trustee established under a Chapter 11 plan of reorganization is uniquely exempt from the duty to report and pay taxes—defeats the statute's essential purpose by creating an entity that is free to receive income and ignore the revenue laws. This is neither what Congress intended nor what the statute provides.

II. The assets of the individual debtor's estate were also placed under the control of the liquidating trustee by the bankruptcy court. To ensure the payment of taxes on income generated by the estate of an individual in bankruptcy, Section 6012(b)(4) broadly provides that the "[r]eturns of * * * an estate of an individual [debtor] under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof." The Internal Revenue Code thereby ensures for individuals under Section 6012 (b)(4), as for corporations under Section 6012 (b)(3), that tax obligations will be borne and fulfilled by the fiduciary who possesses their property.

The court of appeals concluded, however, that the duties of the liquidating trustee were too "ministerial" for him to be a "fiduciary" of the individual debtor's estate. Pet. App. 11a. This conclusion is both factually inaccurate and legally erroneous. It is not factually correct to say that the liquidating trustee, who was authorized to manage the debtor's property "in all * * * ways as would be lawful" (Pet. App. 14a), had only "ministerial" responsibilities. It is also not correct to conclude that a fiduciary's duty to report and pay taxes under Section 6012(b)(4) turns on the extent of his discretionary powers. If the fiduciary has possession of or title to the debtor's property, and if he receives income, he is to report and pay taxes. No more is required for Sections 6012 and 6151 to apply.

ARGUMENT

THE LIQUIDATING TRUSTEE IS REQUIRED BY STATUTE TO FILE TAX RETURNS FOR THE CORPORATE DEBTORS AND FOR THE ESTATE OF THE INDIVIDUAL DEBTOR AND TO PAY THE TAXES DUE ON THE INCOME RECEIVED

The bankruptcy court approved a plan of reorganization that placed essentially all the debtors' assets into a liquidating trust. These assets included (1) the proceeds of the pre-confirmation sale of the debtors' Washington properties and (2) the debtors' Miami properties, which were sold shortly thereafter. The bankruptcy court appointed a liquidating trustee to receive and manage these assets, to conduct an orderly liquidation of them, to invest the proceeds of the liquidation and, ultimately, to distribute the liquidated assets to creditors pursuant to an approved plan (Pet. App. 42a-46a).

The sales of the debtors' properties resulted in capital gains in excess of $75 million. In addition, the trustee realized interest income in excess of $8 million from his investment of the sale proceeds. Yet, the courts below have concluded that the liquidating trustee, who holds the proceeds of these sales and the interest income derived therefrom, is not required to report either the capital gains or interest income and is not required to pay the taxes due on that income. Instead, the court has assigned those responsibilities solely to the debtors, who, because of the transfer of their assets to the liquidating trustee, evidently lack funds to satisfy the very substantial tax liabilities at issue.

The decision of the court of appeals creates a tax loophole of troubling proportions. It would allow a liquidating trustee to be appointed in a case under

Title 11, take title to the debtor's assets, invest or dispose of those assets in a manner that realizes taxable income, but neither report nor pay the taxes owed on that income. In reaching this remarkable result, the court ignored both the language and purpose of the statutory provisions enacted by Congress specifically to ensure that such a loophole would not exist.

I. The Liquidating Trustee Is "A Receiver, Trustee In A Case Under Title 11 Of The United States Code, Or Assignee" Within The Meaning Of Section 6012(b)(3) Of The Internal Revenue Code

A. *Section 6012(b)(3) Requires Liquidating Trustees To File Tax Returns For Corporations*

Congress has long manifested its intent that income accruing to a debtor in bankruptcy is not to escape taxation. Section 6012(b)(3), which evolved from the Revenue Act of 1916, ch. 463, § 13(c), 39 Stat. 771,[6] requires a "receiver, trustee in a case under title 11 of the United States Code, or assignee," who obtains possession of or holds title to "all or substantially all the property * * * of a corporation," to file the income tax return for that corporation. The statute emphasizes the breadth of its command by stressing that the "receiver," "trustee," or "assignee" has this obligation "whether or not such property is being operated" and whether the trustee comes into possession of the corporation's assets "by order of a court * * *, by operation of law or otherwise." 26 U.S.C. 6012(b)(3). Section 6151(a) further requires that the taxes due on the return be paid by the person who filed the return. In this manner,

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[6] See *Northwest Utils. Sec. Corp.* v. *Helvering*, 67 F.2d 619, 621 (8th Cir. 1933), cert. denied, 291 U.S. 684 (1934).

Congress has ensured that the duty to report and pay taxes will follow the assets from which the income is realized and from which the tax payments should be made.

The legislative history of Section 6012(b)(3) reflects that it is part of an extensive congressional design to "protect[] the public revenues" from evasion through corporate reorganization or insolvency and—in contrast to the court of appeals' artificially narrow construction—that it should "be liberally construed to achieve this broad purpose" (*United States* v. *Key*, 397 U.S. 322, 324 (1970)).[7] See also *Bramwell* v. *United States Fidelity & Guaranty Co.*, 269 U.S. 483, 487 (1926). Prior to ratification of the Sixteenth Amendment, which led to the general income tax, Congress imposed an excise tax on the income of "every corporation * * * with respect to the carrying on or doing business by such corporation." Act of

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[7] The legislative history of the Bankruptcy Code also reflects the congressional policy that the bankruptcy laws should not be applied in a manner that avoids tax obligations:

> [T]ax collection rules for bankruptcy cases have a direct impact on the integrity of the Federal, State and local tax systems. These tax systems generally based on voluntary assessment, work to the extent that the majority of taxpayers think they are fair. This presumption of fairness is an asset which should be protected and not jeopardized by permitting taxpayers to use bankruptcy as a means of improperly avoiding their tax debts. To the extent that debtors in a bankruptcy are freed from paying their tax liabilities, the burden of making up the revenues thus lost must be shifted to other taxpayers.

S. Rep. No. 989, 95th Cong., 2d Sess. 13-15 (1978). See also S. Rep. No. 999, 89th Cong., 2d Sess. 9 (1966) ("reliev[ing] the bankrupt of his tax liabilities could materially harm taxpayer morale in this country and thereby adversely affect the self-assessment revenue system").

Aug. 5, 1909, ch. 6, § 38, 36 Stat. 112. This Court held in *United States* v. *Whitridge*, 231 U.S. 144 (1913), that receivers were not subject to the tax, noting that the law did not "in terms impose any duty upon the receivers of corporations or of corporate property, with respect to paying taxes upon the income arising from their management of the corporate assets, or with respect to making any return of such income." *Id.* at 149.[8] Congress responded to the *Whitridge* decision by enacting the predecessor of Section 6012(b)(3), Section 13(c) of the Revenue Act of 1916, ch. 463, 39 Stat. 771, which provided that "receivers, trustees in bankruptcy, or assignees * * * operating the property or business of corporations * * * shall make returns * * * for such corporations."[9]

Treasury Regulations promulgated in 1919 under the first reenactment of this provision (Revenue Act of 1918, ch. 18, § 239, 40 Stat. 1081) reflected the broad sweep of this statute by construing the phrase "receivers, trustees in bankruptcy, or assignees" to include "trustees in dissolution," who were deemed to "stand[] in the place of the corporate officers and * * * required to perform all the duties and assume all the liabilities which would devolve upon the officers of the corporation were they in control." Treas.

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[8] The first general income tax, Act of Oct. 3, 1913, ch. 16, § II A, 38 Stat. 166, also omitted an express reference to receivers of corporate property and was similarly held not to subject such receivers to tax. Sss *Scott* v. *Western Pac. R.R.*, 246 F. 545 (9th Cir. 1917).

[9] See Plumb, *The Tax Recommendations of the Commission on the Bankruptcy Laws—Income Tax Liabilities of the Estate and the Debtor*, 72 Mich. L. Rev. 937, 940-941 (1974).

Reg. 45, art. 622 (1919). Article 547 of this regulation explained (emphasis added):

> *When a corporation is dissolved its affairs are usually wound up by a receiver or trustee in dissolution.* The corporate existence is continued for the purpose of liquidating the assets and paying the debts, and such receiver or trustee stands in the stead of the corporation for such purposes. *Any sales of property by them are to be treated as if made by the corporation for the purpose of ascertaining gain or loss.*

The comprehensive application of this statute to receivers and liquidating trustees has been reemphasized in the numerous, subsequent promulgations of the regulations.[10] In the last substantive revision of this statute in the 1954 Code, Congress again confirmed that the phrase "receiver, trustee in bankruptcy, or assignee" in Section 6012(b)(3), 26 U.S.C. 6012 (1976), was intended to include any "fiduciary" acting on behalf of a corporation. See H.R. Rep. No. 1337, 83d Cong., 2d Sess. A396 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 563 (1954).[11]

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[10] See, *e.g.*, Treas. Reg. 69, arts. 548, 622 (1926); Treas. Reg. 74, arts. 71, 392 (1931); Treas. Reg. 103, § 19.52-2 (1939 Code); Treas. Reg. 111, § 29.22(a)-20 (1939 Code); Treas. Reg. 118, §§ 39.52-2, 39.22(a)-20 (1939 Code). The current Treasury Regulations similarly provide that the filing requirements apply to a "trustee in dissolution" (Treas. Reg. § 1.6012-3(b)(4)), and that gain is recognized by liquidating corporations on sales made "directly or indirectly (as through trustees or a receiver)" (Treas. Reg. § 1.336-1).

[11] Under the pre-1954 versions of Section 6012(b)(3), a fiduciary was subject to corporate return filing requirements only if he was "operating the business or property" of a corporation. The 1954 Code eliminated the uncertainty that had developed in the case law concerning whether liquidating

In accordance with Congress's broad objective to ensure the reporting and payment of taxes on income earned on corporate assets held in others' hands, courts have applied Section 6012(b)(3) and its predecessors to "the assignee of corporate property, engaged in its orderly liquidation" (*Louisville Property Co.* v. *Commissioner*, 140 F.2d 547 (6th Cir.), cert. denied, 322 U.S. 754 and 755 (1944)), to sales of real estate by a "trustee (of a corporation) in dissolution for the benefit of creditors" (*United States* v. *Loo*, 248 F.2d 765, 766 (9th Cir. 1977), cert. denied, 356 U.S. 928 (1958)), to sales of real estate by a trustee in a bankruptcy "liquidation" of the corporation (*United States* v. *Sampsell*, 266 F.2d 631, 633 (9th Cir. 1959)), and to the realization of gain from the sale of corporate assets and the receipt of "passive income from interest" by a "non-operating trustee" in a bankruptcy liquidation (*In re Sapphire S.S. Lines, Inc.*, 762 F.2d 13, 14-15 (2d Cir. 1985). See also *In re Bentley*, 916 F.2d 431, 432 (8th Cir.

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trustees in bankruptcy were "operating" the property of their debtors by directly imposing the filing requirements on fiduciaries "whether or not such property or business is being operated" (26 U.S.C. 6012(b)(3)). See H.R. Rep. No. 1337, *supra*, at A396; S. Rep. No. 1622, *supra*, at 563. See also Plumb, *supra*, 72 Mich. L. Rev. at 943.

The Bankruptcy Tax Act of 1980, Pub. L. No. 96-589, § 6(i), 94 Stat 3410, modified the language of the statute by substituting the words "trustee in a case under title 11 of the United States Code" for "trustee in bankruptcy." The legislative history makes clear that the change was intended only to "substitute references to bankruptcy cases under new title 11 of the U.S. Code for references to bankruptcy proceedings under the now-repealed Bankruptcy Act." S. Rep. No. 1035, 96th Cong., 2d Sess. 52 (1980).

1990)).[12] Affording the statute a construction consistent with its comprehensive text and evident purpose, the Third Circuit held that a trustee appointed by the court to liquidate an estate in bankruptcy was subject to the tax reporting and payment obligations of Sections 6012(b)(3) and 6151(a):

> [W]e think that a fair reading of the pertinent sections of the Internal Revenue Code renders the non-operating trustee of a bankrupt corporation liable for the payment of taxes on the bankrupt's income, provided the trustee has possession of, or title to, substantially all the bankrupt's property.

In re I.J. Knight Realty Corp., 501 F.2d 62, 66 (3d Cir. 1974).

B. *Section 6012(b)(3) Applies To The Liquidating Trustee In This Case*

The court of appeals' decision in this case creates an artificial category, described as "contract trustees," which the court exempts from the tax reporting and payment obligations of Sections 6012(b) and 6151

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[12] The breadth of the responsibility of these fiduciaries is underscored by other Internal Revenue Code provisions. Section 6903(a) provides that "[u]pon notice to the Secretary that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of such other person in respect of a tax imposed by this title." Among the "duties" assumed by such a fiduciary are the responsibilities for filing returns and paying the taxes due. See Krause & Kapiloff, *The Bankrupt Estate, Taxable Income and the Trustee in Bankruptcy*, 34 Fordham L. Rev. 401, 402-403 (1966). See also 28 U.S.C. 960 (requiring "[a]ny officers and agents conducting any business under authority of a United States court" to pay all federal, state and local taxes applicable to the business).

(a). There is no precedent for such a category; indeed, a computer search reveals that the term "contract trustee" appears not to have been used before in any context in any decision ever issued by a federal court. Moreover, as the facts of this case demonstrate, an exemption afforded to a "contract trustee" creates the very evil that the statute is designed to avoid.

1. *The Liquidating Trustee Is A Trustee "In A Case Under Title 11"*

On the effective date of the reorganization plan, essentially all the debtors' assets passed to the liquidating trustee who had been appointed by the bankruptcy court. The court of appeals ruled that the liquidating trustee, who holds the proceeds of the sales of the debtors' properties and the interest income derived from the investment of those proceeds, is not required to report that income or to pay any tax that might be due.[13] This shifting of the tax burden to the insolvent debtor for income realized by the trustee would, as a practical matter, allow the taxes to escape payment. See Pet. App. 16a (Cox,

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[13] The Washington properties were sold before the liquidating trustee was appointed. But the returns of the corporate debtors for the taxable year during which the Washington properties were sold (ending July 31, 1985) were not due until October 15, 1985. 26 U.S.C. 6072(b). On October 10, 1985, the trustee was vested with the corporate assets, including the proceeds of the sale of the Washington properties. The return filing obligations of the trustee thus extend to the 1985 taxable year (including the Washington property sale) as well as later years. See *Nicholas* v. *United States*, 384 U.S. 678, 692-693 (1966). See also *In re Hudson Oil Co.*, 91 Bankr. 932, 946 (Bankr. D. Kan. 1988) (trustee must file all returns due, "even though the taxable year may have ended prior to the filing of the petition").

J., dissenting).[14] The comprehensively worded and broadly intended mission of Section 6012(b)(3)—to capture and tax income received into the hands of the "receiver," "trustee" or "assignee" who holds "substantially all the [assets]" of the corporation—would thus be defeated.

The court of appeals' holding—that the liquidating trustee is not a "trustee in a case under title 11"—cannot be reconciled with the operative statutory language. The liquidating trust was created pursuant to a plan confirmed under Title 11 (11 U.S.C. 1129); the trustee was then appointed by a court that drew its jurisdiction from Title 11 (11 U.S.C. 105); and jurisdiction existed in the bankruptcy court to resolve this adversary proceeding solely under Title 11 (11 U.S.C. 505(a)).[15] Since Title 11 is the sole source of authority for the bankruptcy court to direct the disposition of the property of the debtors, it must follow

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[14] By contrast, in *In re Bentley*, 916 F.2d 431 (8th Cir. 1990), the court of appeals specifically rejected the suggestion that the insolvent debtor, rather than his liquidating trustee, should be responsible for taxes on gains realized and interest income received by the trustee. *Id.* at 432. In reaching this conclusion, the court noted that (*id.* at 433)

> a contrary holding would have the effect of burdening the debtor's fresh start under the bankruptcy law.

See also *Grogan* v. *Garner*, 111 S. Ct. 654, 659 (1991).

[15] 28 U.S.C. 2201(a), which prohibits declaratory judgments "with respect to Federal taxes," contains an exception for "a proceeding under section 505 * * * of Title 11." *Ibid.* This exception permits the bankruptcy court to determine tax controversies of the debtor or the debtor's estate but does not extend to tax controversies of third parties. See *In re Brandt-Airflex Corp.*, 843 F.2d 90, 96 (2d Cir. 1988); *United States* v. *Huckabee Auto Co.*, 783 F.2d 1546, 1549 (11th Cir. 1986).

that the liquidating trustee appointed by the bankruptcy court is a "trustee in a case under title 11." [16]

The court of appeals apparently was of the view that the phrase "trustee in a case under title 11 of the United States Code" refers only to trustees appointed under a single section of the Bankruptcy Code (11 U.S.C. 1104(a)) which deals with trustees appointed to manage the debtor's estate in a Chapter 11 reorganization. See Pet. App. 11a. By its terms, however, Section 6012(b)(3) refers not to any single bankruptcy provision or chapter, but instead generically to all trustees appointed "in a case under title 11." That phrase necessarily encompasses the liquidating trustee in this case, whose authority derives from that of the bankruptcy court "in a case under title 11."

The phrase "trustee in a case under title 11" is not defined in Section 6012(b)(3). The legislative history reflects, however, that this phrase was intended to have the same meaning that the phrase "trustee in bankruptcy" had been given under the repealed Bankruptcy Act. See S. Rep. No. 1035, 96th Cong., 2d Sess. 52-53 (1980); note 11, *supra*. This earlier phrase, while also not expressly defined in the Bankruptcy Act,[17] has long been construed by regulations issued

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[16] Indeed, at other points in this proceeding, the trustee has asserted that he is "a trustee acting in a case under title 11" within the meaning of an exception to the insolvency provisions of 31 U.S.C. 3713. See 3 C.A. App., Doc. 21, at 35. Section 3713(a)(1) gives first priority to claims of the United States if a person is insolvent. Section 3713(a)(2), invoked by the trustee, provides an exception to this rule for "a case under title 11." 31 U.S.C. 3713(a)(2).

[17] 11 U.S.C. 1(31) (1976) did define the term "[t]rustee" as including "all of the trustees * * * of an estate." No similar definition is contained in the Bankruptcy Code.

under the predecessors to Section 6012(b)(3) to include fiduciaries of all types, including liquidating trustees ("trustees in dissolution"), serving under the authority of the bankruptcy courts. See pp. 16-19, *supra*; note 21, *infra*.[18] This contemporaneous and consistent administrative construction of the statute is entitled to considerable deference. As this Court has frequently held, when the Commissioner adopts an interpretation of the general provisions of a tax statute:

> [T]his Court customarily defers to the regulation, which "if found to 'implement the congressional mandate in some reasonable manner,' must be upheld."

National Muffler Dealers Ass'n v. *United States*, 440 U.S. 472, 476 (1979) (quoting *United States* v.

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[18] The phrase "trustee in bankruptcy" also appeared in Section 274(a) of the Revenue Act of 1934, ch. 277, 48 Stat. 744, which required a "trustee in bankruptcy" to give notice of his qualification to the Commissioner. See *Manning* v. *Seeley Tube & Box Co.*, 338 U.S. 561, 562-563 n.2 (1950). The regulations under that section had construed the phrase "trustee in bankruptcy" to include "*a trustee*, receiver, debtor in possession, *or other person designated as in control of the assets of the debtor in any bankruptcy proceeding by order of the court* in which such proceeding is pending." Treas. Reg. 103, § 19.274-1 (1939 Code) (emphasis added). See also *Harris* v. *Commissioner*, 32 T.C. 1216, 1217 (1959) (noting that this regulation applied to "trustees or other persons in possession of assets").

Section 274(a) was succeeded by Section 6036 of the Internal Revenue Code of 1954. Current regulations (Treas. Reg. § 301.6036-1(a)) no longer require that trustees appointed by the bankruptcy court give notice under Section 6036 because the notice that the Service was receiving in any event under the new Bankruptcy Rules was "sufficient for its purposes." T.D. 8172, 1988-1 C.B. 384.

Cartwright, 411 U.S. 546, 550 (1973) (quoting *United States* v. *Correll*, 389 U.S. 299, 307 (1967))).[19]

There is thus no proper basis for interpreting the phrase "trustee in a case under title 11" to exclude liquidating trustees. The phrase has long been applied broadly to refer to any "person designated as in control of the assets of the debtor" in a bankruptcy case, and courts consistently have concluded that liquidating trustees appointed by bankruptcy courts are subject to the filing requirements of Section 6012(b)(3). See, *e.g.*, *In re Sapphire S.S. Lines*, 762 F.2d at 15; *In re I.J. Knight Realty Corp.*, 501 F.2d at 15; *United States* v. *Sampsell*, 266 F.2d at 636; *In re Knight's Mill, Inc.*, 24 Bankr. 143, 145-146 (Bankr. E.D. Mich. 1982). In this manner, the courts have achieved the basic purpose of these statutes by ensuring that tax obligations have been borne and fulfilled by the fiduciaries who possessed the assets that generated the income.

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[19] Deference is afforded to the Commissioner's interpretations of the tax statutes because:

> "Congress has delegated to the * * * Commissioner [of Internal Revenue], not to the courts, the task of prescribing 'all needful rules and regulations for the enforcement' of the Internal Revenue Code. 26 U.S.C. § 7805(a)." *United States* v. *Correll*, 389 U.S. at 307. That delegation helps ensure that in "this area of limitless factual variations," *ibid.*, like cases will be treated alike. It also helps guarantee that the rules will be written by "masters of the subject," *United States* v. *Moore*, 95 U.S. 760, 763 (1878), who will be responsible for putting the rules into effect.

National Muffler Dealers Ass'n v. *United States*, 440 U.S. at 477.

2. *The Liquidating Trustee Also Functioned As An "Assignee" Or A "Receiver"*

Section 6012(b)(3) requires a fiduciary of a corporation to file returns if he acts either as an "assignee" or as a "receiver" of all or substantially all of the property of the corporation. 26 U.S.C. 6012(b)(3). The terms "assignee" and "receiver" accurately describe the function performed by the liquidating trustee in this case.

Although the term "assignee" is not defined by Section 6012(b)(3) or the regulations thereunder, some guidance as to its meaning may be found in the Treasury Regulations under Section 6036. That provision requires an "assignee for benefit of creditors" to give notice of his qualifications to the Secretary of the Treasury. See note 18, *supra*. The regulations under this statute define the phrase "assignee for benefit of creditors" as:

> [*A*]*ny person who*, by authority of law, by the order of any court, by oral or written agreement, or in any other manner acquires control or possession of or title to all or substantially all the assets of a debtor, and who under such acquisition *is authorized to use, reassign, sell, or in any manner dispose of such assets so that the proceeds from the use, sale or other disposition may be paid to or may inure directly or indirectly to the benefit of a creditor or creditors of such debtor.*

Treas. Reg. § 301.6036-1(a)(3) (emphasis added). The language of Section 6012(b)(3) is broader than that of Section 6036, for it is not restricted to assignees "for benefit of creditors." The regulations under Section 6036, however, precisely describe the liquidating trustee in this case. These regulations

also reflect the ordinary usage of the term "assignee," defined by *Webster's Third New International Dictionary* 132 (1986), as "one to whom an assignment is made," "one appointed to act for another," or "one to whom a right or property is legally transferred." See also Restatement (Second) of Contracts § 317(1) (1981) ("assignee" is one to whom a right is transferred). Accordingly, whether based upon administrative interpretation or ordinary usage, it is evident that the liquidating trustee, who received legal title to all of the debtors' property, is an "assignee" with the responsibility of filing returns and paying taxes under Sections 6012(b)(3) and 6151.

The liquidating trustee also functioned as a receiver. The term "receiver" has been described by this Court as "embracing any person acting as [an] agent or depository of funds for a court." *Spring Valley Water Co.* v. *San Francisco*, 246 U.S. 391, 395 (1918). In interpreting the term "receiver" under the Internal Revenue Code, the Board of Tax Appeals observed in *Financial & Industrial Sec. Corp.* v. *Commissioner*, 27 B.T.A. 989, 993 (1933):

> It requires but a cursory examination of the subject of receiverships to realize the multitude of variations in proceedings to which the term may be aptly applied. Congress, with this information readily at hand, may be presumed to have used the broad term deliberately.

See also *Want* v. *Alfred M. Best Co.*, 233 S.C. 460, 485, 105 S.E.2d 678, 691 (1958).[20] Treasury regula-

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[20] See also *Jacoby* v. *Bond & Mortgage Guarantee Co.*, 72 F.2d 420, 423 (2d Cir.) (party in possession of assets of corporation functions as a "receiver"), cert. denied, 293 U.S. 619 (1934); *Tolfree* v. *New York Title & Mortgage Co.*, 72

tions have thus long provided that the return filing requirement applies to receivers "engaged in * * * marshaling, selling, and disposing of [a corporation's assets for purposes of liquidation." Treas. Reg. 118, § 39.52-2 (1939 Code). See also *Pinkerton* v. *United States*, 170 F.2d 846, 847-848 (7th Cir. 1948) (applying statute to "liquidating receiver"); Treas. Reg. § 1.6012-3(b)(4) (applying statute to a "trustee in dissolution"). As this Court stated in a similar context in *Spring Valley Water Co.* v. *San Francisco*, 246 U.S. at 395, "[t]o give the word ["receiver"] the narrower meaning contended for would defeat the obvious and adjudged purpose of the statute."

3. *The Liquidating Trustee Is Not Exempt From The Duty To Report And Pay Taxes On The Theory That He Is A "Contract Trustee" Who Performs "Essentially Ministerial Duties"*

The court of appeals departed from the decisions that have held liquidating trustees subject to the duty to report and pay taxes by affording controlling significance to a label designated as "contract trustee." This term is entirely unfounded. It has no history in the law and fails accurately to describe the source of the trustee's authority, which is derived wholly from court order. Moreover, the court offered no explanation why a liquidating trustee (denominated by the court as a "contract trustee") appointed in a case under Title 11 should be treated differently from assignees for benefit of creditors, trustees in dissolution, receivers or other liquidating trustees—whose common characteristic is that they posesss the prop-

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F.2d 702, 704 (2d Cir. 1934) (same), cert. denied, 293 U.S. 619 (1934); *Banco di Napoli Agency in New York* v. *Commissioner*, 1 T.C. 8 (1942) (same).

erty of a taxpayer for purposes of liquidation and who have consistently been held to fall within the broad sweep of Section 6012(b) or its predecessors. See, *e.g.*, *Hersloff* v. *United States*, 310 F.2d 947 (Ct. Cl. 1962), cert. denied, 373 U.S. 923 (1963); *United States* v. *Loo*, 248 F.2d at 768; *Louisville Property Co.* v. *Commissioner*, 140 F.2d at 547; *Kavanagh* v. *First Nat'l Bank*, 139 F.2d 309 (6th Cir. 1943); *First Nat'l Bank* v. *United States*, 86 F.2d 938 (10th Cir. 1936); *Northwest Utils. Sec. Corp.* v. *Helvering*, 67 F.2d 619, 621 (8th Cir. 1933), cert. denied, 291 U.S. 684 (1934).[21]

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[21] See also *National Metropolitan Bank* v. *United States*, 345 F.2d 823, 825 (Ct. Cl. 1965) (assignee of liquidating bank); *J. Ungar, Inc.* v. *Commissioner*, 244 F.2d 90, 92 (2d Cir. 1957) (assignee "for purposes of liquidation"); *Pinkerton* v. *United States*, 170 F.2d 846, 848 (7th Cir. 1948) ("operating receiver"); *Security First Nat'l Bank* v. *United States*, 153 F.2d 563, 565 (9th Cir. 1946) ("trustee in bankruptcy"); *Kavanagh* v. *First Nat'l Bank*, 139 F.2d 309, 312 (6th Cir. 1943) ("receiver"); *First Nat'l Bank of Greeley* v. *United States*, 86 F.2d 938, 941 (10th Cir. 1936) (trustee for corporation); *Tazewell Elec. Light & Power Co.* v. *Strother*, 84 F.2d 327, 329 (4th Cir. 1936) (liquidating trustee); *Whitney Realty Co.* v. *Commissioner*, 80 F.2d 429, 431 (6th Cir. 1935), cert. denied, 298 U.S. 668, 669 (1936) ("liquidating agent"); *Hellebush* v. *Commissioner*, 65 F.2d 902, 903 (6th Cir. 1933) (trustees to effect "final liquidation"); *Taylor Oil & Gas Co.* v. *Commissioner*, 47 F.2d 108, 109 (5th Cir. 1931), cert. denied, 283 U.S. 862 (1931) ("liquidating trustees"); *United States* v. *McDonald & Eide, Inc.*, 670 F. Supp. 1226, 1233 n.6 (D. Del. 1987), aff'd, 865 F.2d 73 (3d Cir. 1989) ("receiver"); *Smith* v. *Commissioner*, 26 B.T.A. 1178, 1187 (1932) ("trustees in liquidation"); *State ex rel. Gibson* v. *American Bonding & Case Co.*, 225 Iowa 638, 281 N.W. 172 (1938) ("liquidating receiver"). Cf. *In re Loehr*, 98 F. Supp. 402 (E.D. Wis. 1950) (holding court-appointed liquidating trustee required to file returns under 28 U.S.C. 960).

The court of appeals attempted to justify its exemption for "contract trustee[s]" from the scope of Section 6012(b) on the theory that the liquidating trustee was appointed to perform "limited and essentially ministerial duties" (Pet. App. 11a). This characterization is without legal significance and is, in any event, incorrect. The duties of the liquidating trustee include the responsibility to hold, sell and invest assets, receive the income from those assets, enter into contracts, incur and pay expenses, and, ultimately, to make distributions in accordance with the confirmed plan. See Pet. App. 42a-46a. As Judge Cox stated in dissent, to describe these duties as "ministerial" (*id.* at 14a-15a)

> denies the reality of [the trustee's] rights, duties and obligations under the Plan. A mere label does not magically transform the liquidating trustee into something he is not. In fact, his job description squarely fits within the Internal Revenue Code description of a "fiduciary."

Moreover, the statute governing this case makes no distinction turning on the breadth of discretion afforded to the "trustee," "receiver" or "assignee." Instead, regardless of the scope of their discretion, the statute requires fiduciaries to report and pay taxes if they have "possession of or hold[] title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated." 26 U.S.C. 6012(b)(3); see § 6151. The authority of the persons who have been held responsible for taxes under Section 6012 has been derived from a variety of sources: state statutes (*Hersloff* v. *United States*, 310 F.2d 947 (Ct. Cl. 1962), cert. denied, 373 U.S. 923 (1963); *United States* v. *Loo*, 248 F.2d 765 (9th Cir. 1957), cert.

denied, 356 U.S. 928 (1958)); federal statutes (*In re Joplin*, 882 F.2d 1507 (10th Cir. 1989); *In re I.J. Knight Realty Corp.*, 501 F.2d 62 (3d Cir. 1974); *United States* v. *Sampsell*, 266 F.2d 631 (9th Cir. 1959); *Kavanagh* v. *First Nat'l Bank*, 139 F.2d 309 (6th Cir. 1943)); and deeds of assignment or trust (*Louisville Property Co.* v. *Commissioner*, 140 F.2d 547 (6th Cir.), cert. denied, 322 U.S. 754 and 755 (1944); *First Nat'l Bank* v. *United States*, 86 F.2d 938 (10th Cir. 1936); *Northwest Utils. Sec. Corp.* v. *Helvering*, 67 F.2d 619 (8th Cir. 1933), cert. denied, 291 U.S. 684 (1934)). See also note 21, *supra*. But the scope of the authority conferred on these fiduciaries—beyond the basic authority to dispose of assets and invest proceeds—was not a point of importance in any of these cases. The relevant similarities between these fiduciaries were (i) that they administered all or substantially all of a debtor's property and (ii) that their administration of that property resulted in taxable income. See *In re I.J. Knight Realty Corp.*, 501 F.2d at 66. If they have possession or title to the debtors' property and if they receive income generated by that property, they are to report and pay taxes. No more is required for Sections 6012 and 6151 to apply.

A contrary conclusion—that liquidating trustees established in Chapter 11 plans of reorganization are exempt from the duty to report and pay taxes—would eviscerate the basic purpose of the statute. The court of appeals' decision has sanctioned the creation of an entity that is free to receive income and ignore the revenue laws. There can be little doubt that creditors would have every inclination to approve reorganization plans, such as the one in this case, that would permit them to enhance their distributions at the ex-

pense of the public fisc. Under the court of appeals' approach, it would be the rare liquidation indeed in which taxes would be paid on the sale of appreciated corporate assets and the interest earned on the proceeds of those sales. This is plainly not what Congress had in mind in enacting Section 6012(b)(3). To the contrary, as the Ninth Circuit observed in rejecting the argument that a liquidating trustee is not required to pay taxes under Section 6012(b)(3):

> We can see no reason why in an act to raise revenue there should be imputed to Congress such an exception of the principal portion, indeed almost all, of the area of income producing activities in bankruptcy proceedings.

United States v. *Metcalf*, 131 F.2d 677, 679 (9th Cir. 1942), cert. denied, 318 U.S. 769 (1943).

II. The Liquidating Trustee Is A "Fiduciary" Of The Individual Debtor's Estate Within The Meaning Of Section 6012(b)(4)

Under the plan of reorganization in this case, the bankruptcy court appointed a trustee for all property of the estates of the debtors, including the property of the estate of the individual debtor, Theodore B. Gould. Pet. App. 43a. Section 6012(b)(4) provides that the "[r]eturns of * * * an estate of an individual debtor under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof." As with Section 6012(b)(3) in the case of corporate debtors, Section 6012(b)(4) ensures for individual debtors in bankruptcy that their tax obligations are borne and fulfilled by the fiduciary who possesses the property of their estate. The court of appeals erred in concluding that the liquidating trustee was not subject to this statute.

The filing of a petition for relief under the Bankruptcy Code has different tax consequences for individuals than for corporations. When a corporation files for relief, no new taxable entity is created. 26 U.S.C. 1399. When an individual files for relief in bankruptcy court, however, a separate taxable entity, the debtor's estate, is created. 26 U.S.C. 1398.[22] Section 1398 of the Internal Revenue Code contains detailed provisions governing the estate's succession to the individual debtor's tax attributes at the commencement of the bankruptcy case and the debtor's

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[22] Since the individual debtor will continue to earn wages and acquire post-petition property apart from the estate, he is treated as a separate taxable entity with his own tax obligations. H.R. Rep. No. 833, 96th Cong., 2d Sess. 20 n.2 (1980); S. Rep. No. 1035, 96th Cong., 2d Sess. 25 n.2 (1980). The trustee under Chapter 7 or 11 who assumes the estate property reports income and pays tax for the estate.

In contrast, when an individual debtor files for relief under Chapter 13, he retains the property of the estate (unless he agrees to do otherwise in the repayment plan, 11 U.S.C. 1306) and repays his debts out of future income. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 118 (1977). Accordingly, he is treated, with his estate, as a single taxable entity and includes on his tax returns income arising from the use or disposition of estate property. 26 U.S.C. 1398(a), 1399; see H.R. Rep. No. 833, *supra*, at 20 n.2; S. Rep. No. 1035, *supra*, at 25 n.2. The Chapter 13 trustee, unlike a liquidating trustee who must collect and reduce to money the property of the estate, distributes to creditors regular payments made to him by the debtor. 11 U.S.C. 1322(a)(1). Although the Chapter 13 trustee is "no mere disbursing agent," inasmuch as he bears certain additional responsibilities (S. Rep. No. 989, *supra*, at 139; 11 U.S.C. 1302(b)), he functions in much the same way as a disbursing agent and is not subject to return filing obligations. See note 24, *infra*.

reacquisition of those attributes upon the termination of the bankruptcy estate.[23]

When the debtor's property and tax attributes are transferred to the bankruptcy estate, the obligation to report and pay taxes on income arising from the use and disposition of the property is placed on the trustee. To make this clear, the Bankruptcy Tax Act of 1980 amended Section 6012(b)(4)—which theretofore had required the fiduciary of "an estate or a trust" to make returns of income for those entities—to require specifically that the fiduciary of "an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11" is to make such returns. Pub. L. No. 96-589, § 3(b)(2), 94 Stat. 3401; see *In re Joplin*, 882 F.2d at 1510 (trustee in Chapter 7 case required to file return for individual debtor's estate under former Section 6012(b)(4)). When estate property revests in the debtor, the debtor must assume responsibility for taxes arising from its subsequent use or disposition. *In re Olson*, 930 F.2d 6, 8 (8th Cir. 1991); *United States* v. *Redmond*, 36 Bankr. 932, 934 (D. Kan. 1984). In this case, however, the property of the estate was vested in the liquidating trust, and it was the trust that received the capital gains and interest income generated by the property. It is therefore the liquidating trustee, not the debtor, who must file returns reporting the income arising from his administration of the property.

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[23] For example, when the debtor's property vests in the estate at the commencement of the case, the estate succeeds to the debtor's basis in the property. 26 U.S.C. 1398(g)(6). When the property revests in the debtor (for example, upon confirmation of a Chapter 11 plan that does not provide for the property to vest elsewhere, 11 U.S.C. 1141(b)), the debtor reacquires that basis. 26 U.S.C. 1398(i).

Without examining the underlying purpose of Section 6012(b)(4), the court of appeals rejected this straightforward application of the statute because, in the court's view, the trustee's "non-discretionary duties of distributing the trust property in accordance with the terms of the Plan makes [*sic*] him similar to a disbursing agent rather than * * * [a] fiduciary" (Pet. App. 11a-12a). This conclusion ignores the broad meaning of the term "fiduciary" in Section 6012(b)(4) and incorrectly describes the nature of the administrative powers of the trustee under the plan.[24]

A "fiduciary" is defined broadly in Section 7701(a)(6) of the Internal Revenue Code as "a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity." 26 U.S.C. 7701(a)(6). The regulations under this statute provide that "[a] fiduciary is a person who

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[24] The court of appeals erred in relying on *In re Alan Wood Steel Co.*, 7 Bankr. 697 (Bankr. E.D. Pa. 1980), to classify the liquidating trustee as a "disbursing agent." *Alan Wood Steel* was decided under the old Bankruptcy Act, which provided for the appointment of bankruptcy trustees under Section 44(a), 11 U.S.C. 72(a) (1976), receivers under Section 332, 11 U.S.C. 732 (1976), and disbursing agents under Section 337(1), 11 U.S.C. 737(1) (1976). The bankruptcy court in *Alan Wood Steel* recognized this distinction, and stated that a "disbursing agent does not have possession of or hold title to all or substantially all the business or property of the debtor corporation * * * [and] has only the power 'to distribute, subject to the control of the court, the consideration, if any, to be deposited by the debtor.'" 7 Bankr. at 701. By comparison, in the instant case, the liquidating trustee *does* have title to all the property, as well as the power to sell and convert the trust property and distribute the proceeds. The statutorily defined disbursing agent under the old Bankruptcy Act and the liquidating trustee in the instant case are fundamentally dissimilar.

holds in trust an estate to which another has the beneficial title or in which another has a beneficial interest, or receives and controls income of another, as in the case of receivers." Treas. Reg. § 301.7701-6. These definitions plainly encompass the liquidating trustee in this case.

This Court has held in analogous contexts that the term "fiduciary" should be given its generic, ordinary meaning in interpreting statutes. In construing Section 249 of the former Bankruptcy Act, 11 U.S.C. 649 (1976),[25] the Court stated, in words equally applicable to the present case:

> [T]o define "fiduciary" in [the statute] as narrowly as has the Court of Appeals would invite a form of evasion and circumvention which could readily defeat the whole purpose of the statute's prophylactic rule. * * * [T]he mere shifting of titles could enable the very class at which the regulation was directed to avoid its prohibitions. Congress plainly did not indulge in an exercise in futility in enacting [the statute].

Wolf v. *Weinstein*, 372 U.S. 633, 645 (1963). The same comprehensive application of the term "fiduciary" in Section 6012(b)(4) is necessary and appropriate to ensure that tax liabilities arising from the administration of a debtor's property are reported and paid by the person responsible for administering the property. A narrow construction of the term would thwart that purpose. See note 14, *supra*.

In view of the extensive powers and duties vested in the trustee under the reorganization plan, however,

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[25] This statute prohibited the allowance of claims for compensation by persons "acting * * * in a * * * fiduciary capacity" who make unauthorized trades in a debtor's stock. 11 U.S.C. 649 (1976).

the liquidating trustee in this case could fit even within a far narrower reading of the statute. Under the terms of the plan, the property of the individual debtor's estate vested in the trustee. The trustee enjoys the authority not only to liquidate the property but to deal with the property "in all other ways as would be lawful for any person owning the same to deal therewith," including the authority to manage and operate the property and to lease, improve and encumber it. He may sue and be sued. He is also allowed to exercise substantial powers affecting the debtors, most notably, the power to settle litigation in which the debtors are involved and to waive rights on behalf of the debtors. See Pet. App. 43a-46a. Contrary to the court of appeals' holding, the trustee's duties and powers thus are not limited and "ministerial" but are fully comparable to those commonly exercised by executors, administrators, receivers and other fiduciaries. The liquidating trustee must therefore file tax returns for the estate of the individual debtor and pay the taxes due on those returns. See *In re Bentley*, 916 F.2d at 432-433; *In re Joplin*, 882 F.2d at 1510 (liquidating trustee is a "fiduciary" required to report and pay taxes under Sections 6012 (b) (4) and 6151).

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CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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JULY 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 20649